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and OTTOMOTTO LLC

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17 WAYMO LLC,  
18 Plaintiff,  
19 v.  
20 UBER TECHNOLOGIES, INC.,  
OTTOMOTTO LLC; OTTO TRUCKING LLC,  
21 Defendants.

Case No. 3:17-cv-00939-WHA  
**DECLARATION OF MAXWELL V. PRITT IN SUPPORT OF DEFENDANTS UBER TECHNOLOGIES, INC.'S AND OTTOMOTTO, LLC'S MOTION TO ENFORCE THE COURT'S JUNE 7, 2017 ORDER (DKT. 563), TO STRIKE PLAINTIFF WAYMO LLC'S CORRECTED SUPPLEMENTAL INITIAL DISCLOSURES, AND TO PRECLUDE DAMAGES CLAIMS AND CERTAIN WITNESSES**

22 Date: August 10, 2017  
23 Time: 8:00 a.m.  
Ctrm: 8, 19th Floor  
Judge: The Honorable William H. Alsup

24  
25 Trial Date: October 10, 2017  
26  
27  
28

1 I, Maxwell Pritt, declare as follows:

2       1. I am counsel at the law firm of Boies Schiller Flexner LLP representing  
3 Defendants Uber Technologies Inc. and OttoMotto LLC (collectively, “Uber”) in this matter. I  
4 am a member in good standing of the Bar of the State of California. I make this declaration in  
5 support of Defendants’ motion to enforce the Court’s June 7, 2017 order (Dkt. 563), to strike  
6 Plaintiff’s corrected supplemental initial disclosures, and to preclude Plaintiff’s damages claims  
7 and late-disclosed witnesses. I make this declaration based upon matters within my own personal  
8 knowledge and if called as a witness, I could and would competently testify to the matters set  
9 forth herein.

10       2. Plaintiff Waymo LLC (“Waymo”) and Uber exchanged initial disclosures on April  
11 3, 2017.

12       3. Waymo and Uber exchanged supplemental initial disclosures on June 21, 2017.

13       4. Attached as **Exhibit A** is a true and correct copy of Waymo’s supplemental initial  
14 disclosures.

15       5. Waymo emailed its supplemental initial disclosures at 10:04 p.m. on June 21,  
16 2017.

17       6. Waymo emailed Uber a “corrected” supplemental initial disclosures at 10:11 p.m.  
18 on June 22, 2017, identifying 14 additional individuals that Waymo believes are likely to have  
19 discoverable information that Waymo may use to support its claims or defenses pursuant to Rule  
20 26(a)(1)(A)(i): Adam Bentley, Jur van den Berg, Jeff Holden, Rachel Keitzer, Rudy Kim, George  
21 Lagui, Eric Meyhofer, Emil Michael, Stefanie Olsen, Brent Schwarz, Rudy Sevile, Ognen  
22 Stojanovski, Eric Tate, and Salle Yoo. Waymo’s counsel wrote in his email to Uber’s counsel  
23 that Waymo had “inadvertently omitted” those 14 individuals from its previously-served initial  
24 disclosures.

25       7. Attached as **Exhibit B** is a true and correct copy of Waymo’s *Corrected*  
26 Supplemental Initial Disclosures.

27

28

1       8. Attached as **Exhibit C** is a true and correct copy of an email chain dated June 22,  
 2 2017, which includes emails from Waymo's outside counsel to Defendants' outside counsel  
 3 serving Waymo's Corrected Supplemental Initial Disclosures at 10:11 p.m., and subsequently, at  
 4 10:35 p.m., identifying the 14 individuals that were not identified in Waymo's amended initial  
 5 disclosures.

6       9. All but one of the 14 late-disclosed individuals (Stefanie Olson) were previously  
 7 known to Waymo through Uber's initial disclosures, Uber's discovery responses, or deposition  
 8 testimony:

- 9           a. Uber's Initial Disclosures dated April 3, 2017 (Jeff Holden and Eric  
 10 Meyhofer);
- 11          b. Uber's List of Servers, Employees, and Suppliers dated April 4, 2017  
 12 (George Lagui and Eric Meyhofer);
- 13          c. Uber's Response to Waymo's First Set of Expedited Interrogatories,  
 14 Response to Interrogatory No. 6 dated June 5, 2017 (Jeff Holden, Rachel  
 15 Keitzer, Geroge Lagui, Eric Meyhofer, Brent Schwarz, Rudy Sevile, and  
 16 Ognen Stojanovski);
- 17          d. Uber's Response to Waymo's First Set of Expedited Interrogatories,  
 18 Response to Interrogatory No. 7 dated June 5, 2017 (George Lagui and  
 19 Eric Meyhofer);
- 20          e. Uber's Response to Waymo's First Set of Expedited Interrogatories,  
 21 Response to Interrogatory No. 9 dated June 5, 2017 (Salle Yoo);
- 22          f. Uber's Response to Waymo's Second Set of Expedited Interrogatories,  
 23 Response to Interrogatory No. 18 dated June 9, 2017 (Adam Bentley and  
 24 Salle Yoo); Uber's Response to Waymo's Third Set of Expedited  
 25 Interrogatories, Response to Interrogatory No. 23 dated June 20, 2017  
 26 (Brent Schwarz);
- 27          g. Uber's Response to Waymo's Third Set of Expedited Interrogatories,  
 28 Response to Interrogatory No. 27 (June 20, 2017) (Jeff Holden);

- 1 h. April 14, 2017 Rhian Morgan Deposition Transcript at 15:11–16:1 (Adam  
2 Bentley);  
3 i. May 30, 2017 Mason Feldman Deposition Transcript at 91:15–24, 116:8–  
4 12 (Jur van den Berg);  
5 j. June 16, 2017 John Bares Deposition Transcript at 91:2–92:18 (Jeff  
6 Holden);  
7 k. June 19, 2017 Cameron Poetzcher Deposition Transcript at 34:13–35:5  
8 (Jeff Holden);  
9 l. May 30, 2017 Mason Feldman Deposition Transcript at 97:11–18 (Rachel  
10 Keitzer);  
11 m. April 17 Scott Boehmke Deposition Transcript at 7:9–10 (Rudy Kim);  
12 n. April 20, 2017 Daniel Gruver Deposition Transcript at 23:2–12 (George  
13 Lagui);  
14 o. May 4, 2017 James Haslim Deposition Transcript at 341:4–8 (George  
15 Lagui);  
16 p. June 16, 2017 John Bares Deposition Transcript at 8:20–10:14 (Eric  
17 Meyhofer);  
18 q. June 16, 2017 John Bares Deposition Transcript at 159:2–161:19 (Emil  
19 Michael);  
20 r. June 19, 2017 Cameron Poetzsch Deposition Transcript at 24:4–15 (Emil  
21 Michael);  
22 s. May 4, 2017 James Haslim Deposition Transcript at 126:22–127:6,  
23 141:19–142:7 (Brent Schwarz);  
24 t. April 18, 2017 James Haslim Deposition Transcript at 20:15–24, 26:11–23  
25 (Ognen Stojanovski);  
26 u. 30, 2017 Mason Feldman Deposition Transcript at 106:2–7 (Ognen  
27 Stojanovski);  
28 v. April 13, 2017 David Meall Deposition Transcript at 7:3–10 (Eric Tate);

w. June 19, 2017 Cameron Poetzcher Deposition Transcript at 26:17–27:1  
(Salle Yoo).<sup>1</sup>

10. Waymo served its Patent Local Rule 3-8 damages contentions on June 26, 2017.

4           11. Attached as **Exhibit D** is a true and correct copy of Waymo's Damages  
5 Contentious Pursuant to Patent Local Rule 3-8.

6       12. On the morning of June 27, 2017, Uber’s outside counsel, Arturo Gonzalez,  
7 emailed Waymo’s outside counsel and the Special Master to inform the Special Master that  
8 Waymo had disclosed a number of witnesses after the Court’s deadline for supplementing initial  
9 disclosures, and that Uber intended to raise Waymo’s late-disclosed individuals and damages  
10 disclosures with the Court at the June 29, 2017 case management conference. Mr. Gonzalez also  
11 wrote that Uber was available to discuss these issues on a previously-scheduled meet and confer  
12 call that morning.

13        13.      Defendant Otto Trucking’s outside counsel, Neel Chatterjee, replied all to Mr.  
14      Gonzalez’s June 27, 2017 email, writing that Waymo’s “disclosure is completely inadequate and  
15      does not comply with the rules. In addition, there is no specific identification of damages  
16      particular to Otto Trucking. Otto Trucking is a different entity and, as far as I can tell, there is no  
17      specific identification of damages theories for Otto Trucking. Instead, we are lumped together  
18      with Uber and Ottomotto.” Mr. Chatterjee also wrote in his email that “Waymo has produced  
19      nothing to [Otto Trucking] for any claim, defense, or damage that is specific to Otto Trucking.”

20       14. Attached as **Exhibit E** is a true and correct copy of an email chain dated June 27,  
21 2017, which includes the June 27 emails identified in ¶¶ 12 and 13 above from Uber's counsel,  
22 Mr. Gonzalez, and Otto Trucking's counsel, Mr. Chatterjee to the Special Master and Waymo's  
23 counsel.

24       15. The parties held a meet and confer by phone with Special Master Cooper on June  
25 27, 2017, from 10:00 a.m. to approximately 12:00 p.m. Among other things, the parties discussed

<sup>1</sup> This declaration does not attach these documents and deposition excerpts as exhibits. Uber can and will immediately do so, however, if the Court would like to review any of these materials.

1 Waymo's damages disclosures and contentions, the 14 late-disclosed individuals in Waymo's  
 2 "corrected" supplemental initial disclosures, and Uber's intention to raise these issues with the  
 3 Court.

4       16. Waymo's counsel stated during the meet and confer that Waymo accidentally  
 5 failed to include the 14 late-disclosed individuals. Waymo's counsel also responded that some of  
 6 those individuals were in Defendants' disclosures, some were in Waymo's first ten depositions  
 7 submission to the Court, and Waymo had reserved the right to identify additional individuals in  
 8 its disclosures.

9       17. As to Waymo's damages disclosures and contentions, Waymo's counsel said they  
 10 could not provide a detailed explanation of their damages theories and case at this time, and they  
 11 are entitled to discovery on damages before doing so. Otto Trucking's counsel also objected to  
 12 Waymo's failure to specify what damages theories Waymo was asserting against Otto Trucking  
 13 specifically. Waymo's counsel responded that Waymo's damages contentions lay out their  
 14 theories for all defendants, and that their contentions comply with the text of Patent Local Rule 3-  
 15 8.

16       18. Waymo's counsel asserted that these issues concerning Waymo's disclosures were  
 17 "discovery issues" that needed to be litigated before the Special Master and Judge Corley before  
 18 raising them with Judge Alsup. Uber's counsel disagreed. Waymo's counsel asked what Uber's  
 19 counsel wanted Waymo to do with respect to its disclosures and contentions, and Uber's counsel  
 20 said to the extent Waymo wanted to amend its disclosures or contentions, it needed to seek relief  
 21 from the Court.

22       19. The Special Master stated at the end of the June 27th meet and confer that the  
 23 issues concerning Waymo's witness and damages disclosures, and whether they would be raised  
 24 with Judge Alsup at the June 29th Case Management Conference, had been fully discussed and  
 25 vetted.

26       20. Counsel for Uber and Waymo held another meet and confer in person with the  
 27 Special Master at 7:30 a.m. on June 29, 2017, before the Case Management Conference before  
 28 Judge Alsup at 8:00 a.m. Uber's counsel said at that time that Uber did not intend to raise the

1 issues of Waymo's late-disclosed witnesses with Judge Alsup at the Case Management  
2 Conference, but that Uber would inform Judge Alsup that it intended to file a motion concerning  
3 Waymo's inadequate disclosures and damages contentions under Rule 26 and Patent Local Rule  
4 3-8.

5       21. The Court held a Case Management Conference on June 29, 2017, during which  
6 the Court stated that Uber could file a motion concerning Waymo's initial disclosures and  
7 damages contentions, and rejected Waymo's assertion that these were "discovery issues" that had  
8 to be raised with the Special Master and litigated in the first instance before Judge Corley. *See*  
9 6/29/17 CMC Tr. at 97:2-3 ("Disclosure is not the same as discovery. That's a proper motion.  
10 You [Uber] can bring that motion."), 98: 2-6 ("I'm going to let the motion go. Disclosure is not  
11 the same as discovery. Those are two different things. If they [Uber] want to bring that motion,  
12 God bless them. They can bring the motion. Don't [you, Waymo] try to blame the Special  
13 Master.").

14 I declare under penalty of perjury under the laws of the United States that the foregoing is  
15 true and correct. Executed this 3rd day of July, 2017, in Oakland, California.

/s/ Maxwell V. Pritt  
Maxwell V. Pritt

## ATTESTATION OF E-FILED SIGNATURE

I, Karen L. Dunn, am the ECF User whose ID and password are being used to file this document. In compliance with General Order 45, X.B., I hereby attest that Maxwell V. Pritt has concurred in this filing.

Dated: July 3, 2017

/s/ Karen L Dunn  
Karen L. Dunn